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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

SMITHKLINE BEECHAM CORPORATION, )  
d/b/a GLAXOSMITHKLINE, )  
Plaintiff, )  
vs. )  
ABBOTT LABORATORIES, )  
Defendant. )

Case No. 4:07-cv-05702 (CW)

**PLAINTIFF'S NOTICE OF MOTION  
AND UNOPPOSED MOTION FOR  
LEAVE TO FILE SECOND AMENDED  
COMPLAINT**

Judge: Honorable Claudia Wilken  
Hearing Date: March 19, 2015  
Time: 2:00 p.m.  
Location: Courtroom 2 (4<sup>th</sup> Floor)

1 NOTICE IS HEREBY GIVEN that on March 19, 2015, at 2:00 p.m., or as soon thereafter  
2 as the matter may be heard in Courtroom 2 of the above-referenced Court located at 1301 Clay  
3 Street, Oakland, 94612, Plaintiff GlaxoSmithKline (GSK) will, and hereby does, move for leave to  
4 amend its Complaint. This motion is noticed for March 19, 2015, per party agreement and to  
5 comply with Local Rule 7-2(b); however, GSK requests that the Court in its discretion rule on the  
6 motion without a hearing, per Local Rule 7-1(b). Counsel for Abbott has informed counsel for  
7 GSK that it does not oppose GSK's request that the Court decide this motion without a hearing.

8 This motion is brought pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure.  
9 Specifically, GSK moves for leave to amend its complaint to eliminate the first and fourth causes  
10 of action identified in its First Amended Complaint. The first cause of action is for violations of  
11 the Sherman Act, and the fourth cause of action is for violations of the North Carolina prohibition  
12 on monopolization, N.C. Gen. Stat. § 75-2.1. GSK does not seek to add any additional facts,  
13 claims, or parties to its complaint or to amend the remaining two causes of action, which are for  
14 breach of contract and for violation of the North Carolina Unfair and Deceptive Trade Practices  
15 Act (UDTPA), N.C. Gen. Stat. § 75.1-1. GSK believes that eliminating the first and fourth causes  
16 of action will streamline the case, and the trial will proceed more efficiently and effectively as a  
17 result.

18 In support of its motion for leave to amend its complaint and pursuant to Civil Local Rule  
19 10-1, GSK includes its Proposed Second Amended Complaint (Exhibit A), Proposed Order  
20 Granting Leave to File Amended Complaint (Exhibit B), and a document comparing GSK's First  
21 Amended Complaint and Proposed Second Amended Complaint (Exhibit C).

22 Counsel for GSK has consulted with counsel for Defendant Abbott Laboratories  
23 ("Abbott"). Counsel for Abbott has informed counsel for GSK that Abbott does not object to the  
24 dismissal of the antitrust claims, while reserving all of its rights and arguments about the  
25 consequences of doing so.

26 **I. GSK SEEKS TO ELIMINATE FEDERAL AND STATE ANTITRUST CLAIMS.**

27 Pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, GSK moves for leave to  
28 amend its complaint, as it wishes to dismiss some, but not all, of its claims against Abbott. *Hells*

1 *Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 687 (9th Cir. 2005) (“[W]ithdrawals of  
 2 individual claims against a given defendant are governed by Fed. R. Civ. P. 15, which addresses  
 3 amendments to pleadings.” (citing *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1392 (9th Cir.  
 4 1988)); *see also Gen. Signal Corp. v. MCI Telecommunications Corp.*, 66 F.3d 1500, 1513 (9th  
 5 Cir. 1995) (“[W]e have held that Rule 15, not Rule 41, governs the situation when a party  
 6 dismisses some, but not all, of its claims.”).

7 Leave to amend pleadings under Rule 15(a)(2) ought to be granted “with extreme  
 8 liberality.” *Eminence Capital, L.L.C. v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003); *see*  
 9 *also Union Pac. R. Co. v. Nevada Power Co.*, 950 F.2d 1429, 1432 (9th Cir.1991) (liberal standard  
 10 should be applied to amending claims). Here, GSK seeks to amend its complaint to eliminate the  
 11 antitrust causes of action (the first and fourth) and to proceed to trial on the breach of good faith  
 12 and fair dealing and North Carolina Unfair and Deceptive Trade Practices Act causes of action  
 13 (the second and third). GSK believes that amending its complaint in such a manner will  
 14 streamline the case, conserve the Court’s and parties’ resources, and result in a more efficient and  
 15 effective presentation at trial. Courts frequently permit amendment in similar situations. *See, e.g.*,  
 16 *City of New York v. A-1 Jewelry & Pawn, Inc.*, 247 F.R.D. 296, 306-07 (E.D.N.Y. 2007)  
 17 (“Because the amendments eliminate claims, they do not require defendants to undertake  
 18 additional discovery, or respond to new claims, theories, or facts, nor will the proposed  
 19 amendment delay resolution of the dispute.”); *Paglin v. Saztec Int’l, Inc.*, 834 F. Supp. 1184, 1190  
 20 (W.D. Mo. 1993) (allowing plaintiff to amend complaint to drop claims in order to “simplify and  
 21 focus the issues ... and expedite the presentation of evidence” and noting that that any prejudice is  
 22 negated by sparing defendant additional “effort and expense ... [and] the risk of unfavorable  
 23 judgment”); *Allen v. Nat’l Video, Inc.*, 610 F. Supp. 612, 621 (S.D.N.Y. 1985) (allowing plaintiff  
 24 to drop claims when “the elements of his cause of action are unchanged, and ... all of his theories  
 25 are based on the same series of transactions and occurrences with which all parties are fully  
 26 familiar”).

27 Courts consider five factors in considering motions to amend, namely: bad faith, undue  
 28 delay in the final disposition of the case, prejudice to the opposing party, the futility of

1 amendment, and previous amendments to the pleadings. *Foman v. Davis*, 371 U.S. 178, 182  
2 (1962); *Nunes v. Ashcroft*, 375 F.3d 805, 808 (9th Cir. 2004); *see also Hammes Co. Healthcare,*  
3 *LLC v. Tri-City Healthcare Dist.*, No. 09-CV-2324 JLS CAB, 2011 WL 6182423, at \*10-11 (S.D.  
4 Cal. Dec. 13, 2011) (applying the liberal standard of Rule 15(a)(2) and granting leave to amend a  
5 complaint eliminating one of the claims). Prejudice is the paramount consideration. *Eminence*  
6 *Capital*, 316 F.3d at 1052.

7 As GSK's proposed second amended complaint would *narrow* the scope of the retrial,  
8 Abbott will suffer no prejudice through this amendment. This amendment will require no  
9 additional discovery or witnesses, nor will it cause Abbott to incur any additional expense, as GSK  
10 does not seek to amend its other claims. Indeed, GSK's proposed amended complaint will likely  
11 *reduce* Abbott's costs, as trial will likely be considerably shorter. *See, e.g., A-1 Jewelry & Pawn,*  
12 *Inc.*, 247 F.R.D. at 306-07 (allowing amendment to eliminate claims because it would not require  
13 additional discovery or undue delay).

14 Similarly, as GSK proposes only to *reduce* the number of issues in dispute at retrial, this  
15 amendment will not cause any delay in the final disposition of the case; the trial will still be  
16 completed within the time set by the court, and will require fewer overall trial days. Granting  
17 GSK leave to amend its complaint will preserve judicial resources. *See Millar v. Bay Area Rapid*  
18 *Transit Dist.*, 236 F. Supp. 2d 1110, 1113 (N.D. Cal. 2002) (citing "impact on judicial economy,  
19 judicial resources and the Court's ability to manage cases and control its dockets" as reasons to  
20 grant leave to amend a complaint).

21 GSK proposes this amendment in good faith, as a carefully considered decision about its  
22 litigation strategy; there is no attempt to surprise or prejudice Abbott here. There are several  
23 months remaining before trial, and GSK has provided Abbott with notice of its proposed  
24 amendment. Given the "extreme liberality" that the Ninth Circuit uses in granting leave to amend  
25 pleadings, and given that GSK seeks only to *eliminate* causes of action without enlarging the  
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1 remaining claims, GSK asks that the Court grant leave to amend its complaint as reflected in its  
2 proposed amended complaint (Exhibit A).

3  
4 Dated: February 27, 2015

5 /s/ Brian Hennigan  
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